

Pepper Hamilton LLP
Attorneys at Law

The New York Times Building
37th Floor
620 Eighth Avenue
New York, NY 10018-1405
212.808.2700
Fax 212.286.9806

RECEIVED
FEDERAL ELECTION COMMISSION

2017 MAY 12 AM 9:14

CELA

David S. Bralow
direct dial: 212.808.2710
direct fax: 212.286.9806
bralowd@pepperlaw.com

May 10, 2017

Via E-mail

Jeff S. Jordan, Esq.
Office of Complaints Examination and Legal
Administration
999 E Street, NW
Washington, DC 20436

Re: MUR 7240

Dear Mr. Jordan:

We write on behalf of Newsweek Media Group, Inc. ("Newsweek") in response to the Complaint filed by Kerry D. Bowers ("Complainant") on April 16, 2017 in the above-captioned MUR (the "Complaint"). The Complaint arises out of a March 27, 2015 Newsweek article published titled "Ted Cruz: All You Need to Know" (the "Article"). (Complaint Ex. A at 2.) Specifically, Complainant asserts that the following statement amounted to an illegal contribution to Senator Ted Cruz's presidential campaign in violation of 11 CFR § 100.73(b): "Someone had to be first. When it comes to the 2016 presidential campaign, that person is Senator Ted Cruz (R-Texas)." (Complaint at 1.) Because there is no reason to believe that Newsweek's conduct amounts to a violation of the Federal Election Campaign Act of 1971, as amended ("FECA"), no further action on Complainant's frivolous Complaint is warranted.

A. The "Press Exemption"

The Federal Election Commission's (the "Commission") well-established "press exemption" provides that "[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any . . . newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not a contribution unless the facility is owned or controlled

Philadelphia	Boston	Washington, D.C.	Los Angeles	New York	Pittsburgh	
Detroit	Berwyn	Harrisburg	Orange County	Princeton	Silicon Valley	Wilmington

17044425250

Jeff S. Jordan, Esq.

Page 2

May 10, 2017

by any political party, political committee, or candidate.” 11 CFR § 100.73 (emphasis added); *see also* 52 U.S.C. § 30101(9)(B)(i) (an “expenditure” does not include “any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication....”).¹

To determine whether the “press exemption” applies, the Commission first asks whether the company is a “press entity.” *See* FEC AO 2011-11 (Colbert). If the company is a “press entity,” the Commission then must determine “whether the press entity is owned or controlled by any political party or candidate and whether the press entity was acting as a press entity with respect to the conduct in question.” *Fed. Election Com. v. Phillips Pub., Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981). Importantly, the “press exemption” is jurisdictional, so if it applies in a given case, “the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complaint.” MUR 6952 (Fox News Network, LLC) (quoting *Phillips*, 517 F. Supp. at 1313).

B. The Complaint Merits No Action

Here, publication of the Article is covered by the “press exemption” and therefore does not constitute a “contribution” or “expenditure” as defined by FECA.

First, there can be no serious dispute that Newsweek is a “press entity.” Newsweek is a global media company that publishes news, commentary, and features of public interest in print and digital formats for readers throughout the world. The Commission has recognized such activities as constituting an organization acting as a press entity. *See* FEC AO 1996-16 (Bloomberg) (press entity where The Bloomberg “act[ed] as a news and commentary provider via computer linkages, performing a newspaper or periodical publication function for computer uses”).

Second, Newsweek is not “owned or controlled by any political party, political committee, or candidate.” To the contrary, Newsweek is a privately owned New York corporation with no express political affiliation. Complainant has made no allegations whatsoever that support any inference that Newsweek’s shareholders are affiliated with any

¹ The FEC’s regulations further explain that if a news organization is controlled by a political party, political committee, or candidate, then the costs for the news story still do not amount to a contribution if the story “represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility” and “is part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the circulation or listening area.” *Id.* at § 100.73(a)-(b).

Jeff S. Jordan, Esq.

Page 3

May 10, 2017


political party, political committee, or candidate or have exerted any political influence whatsoever.

Last, Newsweek was "acting as a press entity" when it published the Article on its website. "[W]ebsites are a common feature of many media organizations [and] posting news stories, commentaries, and editorials on a press entity's website [are] within the entity's legitimate press functions." FEC AO 2004-7 (MTV).² Newsweek published the Article on its publicly-accessible website. Indeed, as Respondent acknowledges, the Article is still publicly available. (See Complaint Ex. A at 2 (citing website address for the Article).)

C. Conclusion

Because publication of the Article falls within the press exemption and therefore is not subject to the FEC's review, there is no reason to believe that the Article constituted a "contribution" or "expenditure" to Senator Ted Cruz's campaign and the Commission should decline to take any further action. If you have any questions or should you require additional information, please do not hesitate to contact us.

Respectfully,



David S. Bralow
Eric S. Merin

Counsel to Newsweek

cc: Mary Beth deBeau (via email)

² Even if the "press exemption" did not apply, the Complaint makes little sense. Specifically, Complainant's reliance on 11 CFR § 100.73(b) as a standalone provision is misplaced. As made clear by the text of the regulation, Section 100.73(b) applies only if Respondent first demonstrates that Newsweek "is owned or controlled by any political party, political committee, or candidate." 11 CFR § 100.73. But as explained above, Newsweek is a privately-held company not owned or controlled by any political party, political committee, or candidate.

170444255508